Supreme Court, U.S.
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No. 97-1480

In The

Supreme Court of the United States

October Term, 1997

PRO-FOOTBALL, INC., d/b/a
THE WASHINGTON REDSKINS,

Petitioner,

v.

HARTFORD ACCIDENT & INDEMNITY COMPANY,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does Rule 56 of the Federal Rules of Civil Procedure limit the authority of a United States court of appeals to construe an insurance policy in accordance with local law.

2. Should this Court require the District of Columbia to follow the "majority rule" concerning how time is counted in determining whether a local statute of limitations bars a counterclaim.

RULE 29.6 STATEMENT

The respondent, Hartford Accident and Indemnity Company, is a wholly-owned subsidiary of the Hartford Financial Services Group Incorporated.

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STATUTES INVOLVED

The decision of the court below does not rest upon any federal statute or rule. It reflects an application by the court of appeals of the local jurisprudence of the District of Columbia.

STATEMENT OF THE CASE

This is an action for breach of contract brought by the Hartford Accident and Indemnity Company ("Hartford") against Pro-Football, Inc. ("PFI") to recover money damages under an insurance agreement between Hartford and PFI. From July 1988 to July 1991, Hartford administered a standard residual (high risk) market workers' compensation insurance policy obtained by PFI to cover the players and other employees of the Washington Redskins professional football team.

This standard policy is mandated by law in the District of Columbia ("D.C.") and the Commonwealth of Virginia and neither Hartford nor PFI had any authority to alter its terms. Among those terms is a provision requiring Hartford to recalculate the "final premium" for this coverage at the end of the term of the policy so that all the pricing factors affecting the premium are correct for the coverage provided. *See* App. 5. Pricing factors include the rate set by law in the jurisdiction for the classes of employees who work for the employer (*e.g.*, contact sports or truck drivers) applied to the payroll for each class times a factor set by law to capture the employer's actual loss experience or injury rate.

When the policy first was issued in 1988, Hartford expressed an intent to treat the Redskins players as D.C. employees and charge D.C. rates. PFI protested being charged D.C. rates. It claimed that the players were Virginia employees and their coverage should be priced at Virginia rates. It makes a difference because the rate prescribed by the D.C. Department of Insurance as a result of D.C.'s more generous workers' compensation law and other factors makes the coverage of some similarly situated workers, including football players, much more expensive in D.C. than in Virginia. In 1988, PFI was litigating the question of whether the players were D.C. or Virginia employees and it was not yet decided. Hartford agreed to cover the players as Virginia employees, although most injured players continued to file workers' compensation claims as if they were D.C. employees.

The D.C. Court of Appeals settled the question by holding that the players were D.C. employees for workers' compensation purposes, thereby making most players eligible for D.C. benefits, regardless of where they were injured. *Pro-Football, Inc. v. D.C. Dep't of Employment Services*, 588 A.2d 275 (D.C. 1991) ("*Anderson*"). App. 3. Shortly after *Anderson*, Hartford notified PFI that its players would no longer be classified as Virginia employees. *Anderson* was retroactive, covering all injuries occurring during the Hartford policy period. Accordingly, after the termination of the 1991 policy year, Hartford recalculated the premium for all three years of the policy to properly collect the amount that should have been charged for three years of D.C. coverage. PFI had paid only for three years of Virginia coverage.

Hartford billed PFI for the underpayment of premium and PFI refused to pay. Hartford sued for breach of contract and PFI counterclaimed. Cross-motions for summary judgment were filed. The district court granted summary judgment to PFI on Hartford's breach of contract claim. Summary judgment was granted to Hartford on PFI's counterclaims on the grounds that they were untimely under D.C. law.

Both sides appealed and on October 28, 1997, the court of appeals reversed the grant of summary judgment on Hartford's breach of contract claim and affirmed the dismissal of the untimely counterclaim. App. 1. The court of appeals also directed the district court to enter summary judgment in favor of Hartford on its breach of contract claim. App. 16. The case was remanded for a determination of damages.

This petition for certiorari followed.

REASONS FOR DENYING THE WRIT

This case involves no unsettled or important principle of federal law and presents no jurisprudential disagreement. It was decided under settled principles of the local law of the District of Columbia and it does not meet the requirements for review on certiorari set forth in Rule 10 of the Rules of the Supreme Court of the United States.

PFI's main complaint is that Rule 56 of the Federal Rules of Civil Procedure precludes the court of appeals' interpretation of the insurance policy. This was not pressed in the court of appeals, but even if it were, it

lacks merit. Under D.C. law, the interpretation of an insurance policy is a matter of law that is decided by the court. *Geico v. Fetisoff*, 958 F.2d 1137, 1141 (D.C. Cir. 1992). The court of appeals applied D.C. law and interpreted the policy to permit a recalculation of the premiums to properly capture the rate applicable to D.C. football players. Nothing in this holding implicates Rule 56 or suggests an important question of its applicability in this or any setting.

Moreover, the interpretation favored by the court of appeals is fully consistent with every other judicial decision interpreting similar or identical "final premium" clauses in insurance policies. *See e.g., D.A.X., Inc. v. Employers Ins. Of Wausau*, 659 N.E.2d 1150 (Ind. Ct. App. 1996); *Continental Ins. Co. v. Seppala & Aho Constr. Co., Inc.*, 430 A.2d 157 (N.H. 1981); *see also* Lee R. Russ & Thomas F. Segalla, 5 *Couch on Insurance* § 99.15 (3d ed. 1996). No genuine issue of federal law is presented, and there is no reason for this Court to review the court of appeals' interpretation of this insurance contract.

On the counterclaim, PFI simply asks this Court to conform D.C. law to a majority rule on the relation back of counterclaims. There is no issue of federal law presented here and this Court does not conform the substantive laws of the individual states or D.C. to some preferred majority or minority position, absent a compelling constitutional concern. There is no such concern here.

CONCLUSION

The petition for writ of certiorari to the U.S. Court of Appeals for the District of Columbia Circuit should be denied.

Respectfully submitted,

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